

ONONDAGA LAKE SUPERFUND SITE  
TOLLING AGREEMENT

This Tolling Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2015 among the United States of America (“United States”) on behalf of the United States Environmental Protection Agency (“EPA”), the State of New York (the “State”) on behalf of the New York State Department of Environmental Conservation (“NYSDEC”), the State Trustee of Natural Resources and other State agencies, and \_\_\_\_\_ (“Cooperating Party”).

**WHEREAS**, the State and EPA each conducted response activities and thereby incurred response costs related to the release or threat of release of hazardous substances at the Onondaga Lake Superfund Site (“Site”), located in Onondaga County, New York.

**WHEREAS**, the United States and the State contend that they each have a claim against Cooperating Party pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), as amended, 42 U.S.C. § 9607 for the recovery of response costs and the State further contends that it also has a claim against Cooperating Party pursuant to State statutory and common law for the recovery of response costs (collectively, the “Tolled Claims”).

**WHEREAS**, the United States, the State, and Cooperating Party enter into this Tolling Agreement to facilitate settlement negotiations between the parties within the time period provided by this Agreement and further wish to defer any litigation concerning the Tolled Claims, without thereby altering the claims or defenses available to any party hereto, except as specifically provided herein.

**NOW, THEREFORE, the parties hereto, in consideration of the covenants set out herein, agree as follows:**

1. Subject to the provisions of Paragraph 6, the period commencing on October 1, 2005 and ending on October 30, 2015 inclusive (the “Tolling Period”), shall not be included in computing the running of any statute of limitations potentially applicable to any action brought by the United States or the State on the Tolled Claims.
2. Any defenses of laches, estoppel, or waiver, or other equitable defenses based upon the running or expiration of any time period shall not include the Tolling Period for the Tolled Claims.
3. Cooperating Party shall not assert, plead, or raise against the United States or the State in any fashion, whether by answer, motion or otherwise, any defense of laches, estoppel, waiver or other similar equitable defense based on the running of any statute of limitations or the passage of time during the Tolling Period in any action brought on the Tolled Claims.
4. This Tolling Agreement does not constitute an admission or acknowledgment of any fact, conclusion of law, or liability by any party to this Tolling Agreement. Nor does this

Tolling Agreement constitute an admission or acknowledgment on the part of the United States or the State that any statute of limitations, or defense concerning the timeliness of commencing a civil action, is applicable to the Tolled Claims. The United States and the State each reserve the right to assert that no statute of limitations applies to any of the Tolled Claims and that no other defense based upon the timeliness of commencing a civil action is applicable. Cooperating Party reserves all rights and defenses which it may have, except as set forth in this Tolling Agreement, to contest or defend any claim or action the United States or the State may assert or initiate against the Cooperating Party.

5. This Tolling Agreement may not be modified except in a writing signed by all the parties. This Tolling Agreement may be extended for such period of time as the parties agree to in writing.

6. The United States or the State of New York may terminate settlement negotiations and commence suit at any time, upon provision of written notice by certified mail, in which case the tolling period shall terminate on the 28<sup>th</sup> day after the date of such notice, regardless of any termination date set forth in Paragraph 1 above.

7. This Tolling Agreement does not limit in any way the nature or scope of any claims that could be brought by the United States or the State in a complaint against Cooperating Party or the date on which the United States or the State may file a complaint, except as expressly stated herein.

8. This Tolling Agreement is not intended to affect any claims by or against third parties.

9. Cooperating Party shall preserve and maintain, during the pendency of the Tolling Period, and for a minimum of one year after termination of the Tolling Period, at least one legible copy of all documents and other materials subject to discovery under the Federal Rules of Civil Procedure and relating to the Tolled Claims, regardless of any corporate or document retention policy to the contrary or potential claim of privilege regarding any document.

10. This Tolling Agreement contains the entire agreement between the parties, and no statement, promise, or inducement made by any party to this Tolling Agreement that is not set forth in this Tolling Agreement shall be valid or binding, nor shall it be used in construing the terms of this Tolling Agreement as set forth herein.

11. The undersigned representative of each of the parties certifies that he or she is fully authorized to enter into the terms and conditions of this Tolling Agreement and to legally bind such party to all terms and conditions of this document. This Tolling Agreement shall be binding upon the United States, acting on behalf of the United States EPA, the State, acting on behalf of the NYSDEC, the State Trustee of Natural Resources and other State agencies, and upon Cooperating Party and its successors.

12. This Tolling Agreement is effective upon execution by the parties, and without the requirement of filing with the Court, and may be signed in counterparts.

13. The terms, meaning and legal effect of the Agreement shall be interpreted, with respect to the State of New York, under the laws of the State of New York, and with respect to the United States, under the laws of the United States, if applicable, and otherwise interpreted under the laws of the State of New York.

**For the United States on behalf of the  
U.S. Environmental Protection Agency:**

Robert Maher  
Assistant Section Chief  
U.S. Department of Justice  
Environment and Natural Resources  
Division  
Environmental Enforcement Section

---

Donna D. Duer  
Trial Attorney  
U.S. Department of Justice  
Environment and Natural Resources  
Division  
Environmental Enforcement Section  
P.O. Box 7611  
Washington, DC 20044-7611

**For Cooperating Party:**

---

Signature

---

Name

---

Title

---

Cooperating Party

---

Address

**For the State of New York:**

---

Andrew Gershon  
Assistant Attorney General  
State of New York  
Office of the Attorney General  
120 Broadway  
New York, New York 10271  
Of counsel to ERIC T. SCHNEIDERMAN Attorney General of the State of New York